

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD E. MALLORY,

Plaintiff,

Hon. Richard Alan Enslen

v.

Case No. 1:04-CV-137

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

ORDER

This matter is before the Court on the Motion for Contempt filed by non-party Daniel O’Leary. For the reasons discussed below, the Court **denies** movant’s request.

On April 15, 2005, the Court entered Judgment in this matter for Plaintiff, Donald E. Mallory. (Dkt. No. 32). As part of its ruling, the Court ordered that the Michigan Department of Corrections “is immediately and permanently enjoined from opening (outside the prisoner’s presence) the legal mail of any prisoner who properly requests, or has previously requested, that his or her legal mail be opened only in his or her presence.” *Id.*

Asserting that the MDOC improperly opened his legal mail outside his presence, non-party Daniel O’Leary seeks the imposition of contempt sanctions upon the MDOC. While the Court is not unsympathetic to the allegations in O’Leary’s affidavit, his attempt to intervene in an action to which he is not a party (and which has been terminated) is not appropriate. This is not to suggest that O’Leary is without recourse, however, as he may initiate on his own behalf whatever legal action (if any) he deems appropriate. The Court offers no opinion on the merit of any such action.

Accordingly, **IT IS HEREBY ORDERED** that Movant Daniel O’Leary’s Motion for Contempt (Dkt. No. 38) is **DENIED**.

DATED in Kalamazoo, MI:
October 5, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE